Branch International Services, Inc. and Ben Ruegsegger Trucking Services, Inc. *and* International Brotherhood of Teamsters, Local No. 486, AFL–CIO. Cases 7–CA–32902, 7–CA–33214, and 7–CA–33359

May 24, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On November 3, 1993, Administrative Law Judge Donald R. Holley issued the attached decision. The Respondents filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Branch International Services, Inc., Auburn Hills, Michigan, and Ben Ruegsegger Trucking Services, Inc., Kawkawlin, Michigan, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

''(a) Failing and refusing to furnish International Brotherhood of Teamsters, Local No. 486, AFL–CIO with relevant information which was necessary to permit it to perform its representative functions.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The judge inadvertently omitted language concerning the refusal-to-furnish-information violation in his recommended Order and in his notice to employees. We have modified the Order and notice to include such language.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to furnish International Brotherhood of Teamsters, Local No. 486, AFL–CIO with relevant information which is necessary to permit it to perform its representative functions.

WE WILL NOT bypass the Union and deal directly with employees by unilaterally permitting employees to decide whether union dues, initiation fees, and uniform assessments will be deducted from their pay and be remitted to the Union without regard to whether such employees are signatory to valid checkoff authorizations.

WE WILL NOT substitute the B.I.S., Inc. Health Plan for the contractually required Blue Cross/Blue Shield Plan.

WE WILL NOT refuse to honor and abide by the checkoff provisions contained in article 1, section 3, of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide bargaining unit employees with the Blue Cross/Blue Shield Health coverage required by the current collective-bargaining agreement.

WE WILL reimburse the Union for monetary damages it sustained as a result of our refusal to honor and abide by article 1, section 3, of the contract since December 1, 1991, and as a result of our April 8, 1992 action which caused employees to elect whether union dues, initiation fees, and uniform assessments would be deducted from their pay and be remitted to the Union without regard to whether such employees were signatory to valid checkoff authorizations.

WE WILL reimburse unit employees for any losses they sustained, if any, as a result of the substitution of the B.I.S., Inc. Health Plan for the contractually required Blue Cross/Blue Shield Health Plan, with interest.

BRANCH INTERNATIONAL SERVICES, INC. AND BEN RUEGSEGGER TRUCKING SERVICES, INC.

Dennis R. Boren, Esq., for the General Counsel.
Charles Garavaglia, of Auburn Hills, Michigan, for the Respondent.
Gerry M. Miller, Esq. (Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C. Brotherhood), of Milwaukee, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On a charge filed by International Brotherhood of Teamsters, Local No. 486, AFL–CIO in Case 7–CA–32902 on February 11, 1992,[1] the Acting Regional Director for Region 7 of the National Labor Relations Board issued a complaint on March 26 which alleged, in substance, that Branch International

[1] All dates herein are 1992 unless otherwise indicated.

Services, Inc. (Branch) and Ben Ruegsegger Trucking Services, Inc. (Ruegsegger) are joint employers and they violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act by: refusing to furnish the Union with requested information; unilaterally requiring unit employees to complete new job applications; unilaterally instituting new medical insurance while ceasing to provide contractually required medical insurance; and refusing to remit union dues and initiation fees in accordance with a subsisting collective-bargaining agreement. Branch and Ruegsegger (Respondents) filed a timely answer denying they had engaged in the unfair labor practices alleged in the complaint. Thereafter, on April 28, the Union filed the charge in Case 7–CA–33214, and on June 3 the Region issued a second complaint which alleged, in substance, that the Respondents violated Section 8(a)(1) and (5) of the Act by: dealing directly with employees by distributing a memo among them which requested that they elect whether or not they wanted union dues deducted from their paychecks; and by refusing to abide by a contractual requirement which obligated them to deduct union dues, initiation fees, and uniform assessments from the pay of bargaining unit employees for submission to the Union. By order dated June 4, Cases 7–CA–32902 and 7–CA–33214 were consolidated for trial. Respondents filed timely answers denying they had committed the unfair labor practices alleged in the June 3 complaint. Subsequently, on June 5, the Union filed the charge in Case 7–CA–33359, and on July 14 the Region issued a complaint in that case.[2] In substance, the complaint alleges that Respondents violated Section 8(a)(1) and (5) and Section 8(d) of the Act by: threatening employees with unspecified reprisals for supporting the Union; and by unilaterally instituting a 10 a.m. dispatch time for a Pennsylvania run, although the parties' collective-bargaining agreement specified that dispatches would be made at 3 p.m. All three cases were consolidated for trial by order dated July 15. Respondents filed a timely answer denying they had engaged in the unfair labor practices alleged in the July 14 complaint.

The case was heard in Detroit, Michigan, on June 7, 8, and 9, 1993. All parties appeared and they were afforded full opportunity to participate. On the entire record, and from my observation of the demeanor of the witnesses who gave testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Ruegsegger, a Michigan corporation, with an office and place of business in Kawkawlin, Michigan, is engaged in the interstate transportation of freight. During the 12-month period ending October 11, 1991, it derived gross revenue in an amount exceeding $50,000 for delivering freight from Michigan to points located outside the State of Michigan. It is admitted, and I find, that Respondent Ruegsegger is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Branch, an Indiana corporation, with an office and place of business in Auburn Hills, Michigan, is engaged in the business of leasing employees to other businesses including Respondent Ruegsegger and other employers directly engaged in interstate commerce. During the year ending December 31, 1991, Respondent Branch provided employee leasing services valued in excess of $50,000 directly to customers located outside the State of Michigan. It is admitted, and I find, that Respondent Branch is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that International Brotherhood of Teamsters, Local No. 486, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent Ruegsegger is a trucking company which transports general commodities. It normally utilizes about 15 drivers, some of whom are owner-operators. All drivers pull company trailers, but owner-operators operate tractors which they own. Company drivers simply receive pay for driving, while owner-operators receive pay for driving plus separate payment for the use of their trucks. At all times material, the drivers have been supervised by: Ben Ruegsegger, president; Alan Ruegsegger, general manager; Ron McNally, dispatcher and maintenance supervisor; and Lynn McNally, office manager (all admitted supervisors).

The Union has represented Respondent Ruegsegger's drivers since 1964, and the parties have been signatory to a number of collective-bargaining agreements over the years. Such agreements have contained union-security and checkoff clauses, and James Ayers, a Local 486 business agent assigned to service the Ruegsegger bargaining unit,[3] testified that Respondent Ruegsegger regularly deducted appropriate dues, initiation fees, and uniform assessments from the pay of unit employees and sent such moneys to the Union in timely fashion through November 1991.

Respondent Branch is an employee leasing firm. Its owner, Charles Garavaglia, who also serves as its president, convinced Ruegsegger's owner, Ben Ruegsegger, and his son, Alan Ruegsegger, during the fall of 1991, that they could save money, principally on health insurance and workmen's compensation insurance, if they entered an employee leasing contract with Respondent Branch. The parties entered such an agreement on November 14, 1991. A copy of the agreement, minus Exhibit A, was placed in the record as General Counsel's Exhibit 9.

The record reveals that to effectuate the agreement, all management and unit personnel of Respondent Ruegsegger, excluding Ben Ruegsegger who takes no salary from the business, were simply transferred to Respondent Branch's payroll. Thereafter, Respondent Ruegsegger simply continued to operate its business as normal with little, if any, inter-

[2] Par. 10 amended to add (drivers) after operators; par. 14(a) amended by adding p.m. to 3; and par. 14(b) amended by changing 4(g) to 4(f).

[3] The parties are agreed, and I find, the appropriate bargaining unit to be:

> All company drivers and owner/operators (drivers) employed by Respondents at or out of Respondent Ruegsegger's 1754 Chip Road, Kawkawlin, Michigan facility, but excluding mechanics, guards and supervisors as defined in the Act.

ference or direction from Respondent Branch, i.e., Branch handled payroll matters and Ruegsegger handled matters involving the transportation of freight.

By letters dated November 14 and 15, 1991, Garavaglia (Branch) and Ben Ruegsegger (Ruegsegger) notified Local 486's business agent Ayers that Respondent Ruegsegger had signed an agreement with Respondent Branch and that the employees of Ruegsegger were to become employees of Branch, who was to lease such employees back to Ruegsegger.[4] Both letters indicated Respondent Branch was to accept the subsisting collective-bargaining agreement between the Union and Ruegsegger, and Garavaglia's letter invited the Union to send all further union dues statements to Respondent Branch.

During the November 30–December 1, 1991 weekend, the Union sponsored a strike at the Ruegsegger terminal and no loads were successfully dispatched. The strike ended on December 2, 1991, when Respondent Ruegsegger and the Union executed a new collective-bargaining agreement which was to be effective from April 1, 1991, to and including March 31, 1994.[5]

On December 8, 1991, Garavaglia, representing Respondent Branch, met at Ruegsegger's garage with Ruegsegger's drivers and owner-operators. Local 486's secretary-treasurer, James Bohlen, and business agent Ayers attended the meeting. Garavaglia informed the employees that: they were to be carried on Branch's payroll; that he wanted to switch them from Blue Cross/Blue Shield insurance to a Branch plan which would afford them the same or better benefits; and that Branch would obtain workmen's compensation coverage. The meeting lasted several hours and employees were given the opportunity to ask questions. At the conclusion of the meeting, the union representatives requested copies of the Branch and Blue Cross/Blue Shield plans, indicating they wished to compare them.

Respondent Branch became a party to the collective-bargaining agreement (entered by Respondent Ruegsegger and the Union on December 2, 1991) when Garavaglia signed the agreement on December 31, 1991. A short addendum to the contract reveals that Respondent Branch ''accepted and adopted'' the agreement ''as the co-employer.''[6] Bohlen signed the addendum on December 30, 1991 (conformed copies erroneously indicate a 12/2/92 signature date).

B. *Individual Allegations*

The above-described complaints allege that Respondents violated Section 8(a)(1) and (5) and Section 8(d) of the Act in numerous respects after they executed an employee lease agreement on November 14, 1991. The allegations and the evidence offered to prove or disprove them are discussed individually below.

1. The joint employer issue

The complaints allege that Respondents have been joint employers at all times material.

The joint employer concept recognizes that two or more business entities are in fact separate, but they share or codetermine those matters governing the essential terms or conditions of employment. *Laerco Transportation*, 269 NLRB 324, 325 (1984); *Sun-Maid Growers of California*, 239 NLRB 346 (1978), enfd. 618 F.2d 56 (9th Cir. 1980). Generally, a joint employer finding is justified where it has been demonstrated that the employer-customers meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision, direction, and determination of labor relations policies. *Boire v. Greyhound Corp*., 376 U.S. 473 (1964); *Browning-Ferris Industries of Pennsylvania*, 691 F.2d 1117 (3d Cir. 1982), enfg. 259 NLRB 148 (1981); *Hamburg Industries*, 193 NLRB 67 (1971).

In the instant case, the record reveals that, although the lease agreement executed by the parties on November 14 provided that Branch was an ''independent contractor'' and it was to accomplish all hiring, firing, discipline, and determination of labor policies, Ruegsegger, by Ben Ruegsegger, acting alone, ended the November 30–December 2, 1991 strike by the Union when he executed a new collective-bargaining agreement with the Union on December 2. Inspection of the bargaining agreement reveals that it defines the working conditions and wages to be enjoyed by bargaining unit employees during the period extending from April 1, 1991, to March 31, 1994. Significantly, Branch became a party to the contract when Garavaglia signed it as ''co-employer'' on December 30, 1991.

In my view, the above facts, standing alone, establish that Ruegsegger exercised sufficient control over the labor policies of Branch and over the wages to be paid to the employees Branch assigned to Ruegsegger to constitute Branch and Ruegsegger joint employers.

The employee lease situation here differs from other employee lease situations as all of Ruegsegger's management (except Ben Ruegsegger) were transferred from Ruegsegger's payroll to Branch's payroll. Thus, subsequent to the execution of the lease, supervision and direction of Ruegsegger's employees was accomplished by precisely the same individuals who had always exercised control for Ruegsegger. Significantly, the record reveals that, although Garavaglia may have visited the terminal on occasion after the lease was executed, he exercised no supervisory authority. In the same vein, uncontested is the fact that, at times material, Branch had no management officials other than Garavaglia.

As observed by counsel for General Counsel in his brief (Br. 9 and 10), Ruegsegger makes and implements decisions regarding leased or company-owned equipment without consulting Branch. Thus, Alan Ruegsegger, after discussing it with his father, issued a warning to driver William Shook for overloading in a document captioned ''Notice to Employee of Ben Ruegsegger Trucking Services, Inc.'' (G.C. Exh. 45.)

In sum, the instant record reveals that Ruegsegger participates meaningfully in the exercise of control over matters governing the terms and conditions of employment of its drivers. I find that the General Counsel has established that the Respondents are joint employees as alleged. *Syufy Enterprises*, 220 NLRB 738 (1975); *Schnabel's Drivers for Lease*, 249 NLRB 1164 (1980).

[4] G.C. Exhs. 3 and 4.

[5] See G.C. Exh. 2.

[6] See G.C. Exh. 2, p. 22. By a separate addendum, the parties agreed that if the lease agreement between Branch and Ruegsegger was terminated, the employees leased to Ruegsegger would revert back to and become Ruegsegger's employees.

2. The refusal to furnish information

By letter dated November 18, 1991 (G.C. Exh. 5), Union Business Agent Ayers requested that Branch supply the Union with a copy of its agreement with Ruegsegger. On November 21, Branch President Garavaglia sent the Union a sample employee lease agreement. On November 27, the Union requested that Ruegsegger supply it with a copy of its contract with Branch, together with ''all amendments, riders, memorandums or the like.'' (G.C. Exh. 8.) On December 4, Alan Ruegsegger handed Business Agent Ayers a copy of the lease agreement executed November 14, minus ''Exhibit A,'' which was referred to in the body of the agreement (G.C. Exh. 9). By letter to Ruegsegger dated December 5, the Union requested that it be provided with a copy of ''Exhibit A'' to the November 14 lease. Ruegsegger did not respond to the Union's December 5 letter, and, on December 16, the Union sent Branch a letter which, inter alia, requested a copy of ''Exhibit A,'' and/or ''information which details the basis on which your company is paid by Ruegsegger Trucking.'' Ayers testified that Garavaglia responded to his December 16 request by informing him by letter, inter alia, ''you are not entitled by either federal law or the NLRB Act as it relates to the financial arrangement between my customer and Branch International Services, Inc.'' On July 29, 1992, after Garavaglia and union representatives met in an attempt to settle this case, Garavaglia sent James Bohlen a copy of ''Exhibit A.'' The body of the document, which was placed in the record as Respondent's Exhibit 9, is as follows:

> Lessee shall pay Lessor for services rendered pursuant to the Agreement for drivers, dock employees, office clerical and/or management.
>
> The Lessee shall pay the Lessor the fee of ________ for each:
>
> Driver
> Office
> Mechanic
>
> The Lessee shall pay to the Lessor all direct costs as follows:
>
> 1. Federal, state and local income taxes
> 2. Social Security taxes
> 3. Workmen's Compensation costs
> 4. Wages
> 5. Medical Premiums (if applicable)
> 6. Vacation and Holiday pay (if applicable)
> 7. ____________________________________
>
> Lessee shall pay Lessor the above items as billed on a weekly basis. Lessee shall pay Lessor no later than *Friday of the week payroll is received.*

Union Business Agent Ayers testified that the Union needed Exhibit A to the November 14, 1991 lease because it needed to know the financial arrangement between Respondents so it could ascertain whether Branch was a successor employer or a payroll agent for Ruegsegger, it needed to know how the arrangement would affect its members, and it needed to know if Branch/Garavaglia had the financial ability to meet his contractual obligations as a coemployer.

It is well settled that an employer has a statutory obligation to provide, on request, relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant. However, where a union has requested information with respect to matters occurring outside the bargaining unit, the burden is on the union to demonstrate that the information is relevant. *Pfizer, Inc.*, 268 NLRB 916 (1984), enfd. 736 F.2d 887 (7th Cir. 1985); *Ohio Power Co.*, 216 NLRB 987 (1975), enfd. mem. 531 F.2d 1381 (6th Cir. 1976). In either situation, the standard for relevancy is the same: ''a liberal discovery-type standard.'' *Acme Industrial*, supra, 385 U.S. at 437.

The Union's request in this case was partially satisfied when Alan Ruegsegger delivered a copy of the lease agreement, minus Exhibit A, to Ayers on December 4, 1991. As revealed above, however, both Respondents failed and refused, despite repeated requests to furnish the Union with Exhibit A to the lease, until Garavaglia mailed it to Secretary-Treasurer James Bohlen on July 29, 1992.

Inspection of Exhibit A to the lease causes me to conclude that it defined to a considerable extent the actual relationship which existed between Ruegsegger and Branch and the bargaining unit employees. I find that Exhibit A contained relevant information which had properly been requested by the Union to enable it to perform its representation functions. By failing and refusing to furnish the information from November 18, 1991, until July 29, 1992, I find that Respondents violated Section 8(a)(1) and (5) of the Act as alleged.

3. The signing of new employment applications

On December 26, 1991, Branch attached a notice, the body of which is as follows, to the paychecks of bargaining unit employees.

> Attached to your paycheck is an application, I–9 and W–4 which must be completed. Federal law requires the company to have this information on record. Unfortunately, if I don't have them back by Friday, January 3, 1992, I will not be able to pay you.

The complaint alleges, and the General Counsel contends, that Branch took the described action without giving notice to the Union or affording it an opportunity to bargain over the matter.

Garavaglia testified that, within several days of December 8, 1991 (date of meeting at terminal), Union Secretary-Treasurer James Bohlen telephoned him during a weekend to advise that Business Agent Ayers had checked out Branch's medical plan and it looked like there were some deficiencies. At the conclusion of their conversation, Garavaglia contends he told Bohlen he needed some applications, I–9s and W–4s, filled out. He further indicated that Bohlen asked what an I–9 was, and indicated that after he explained it had to do with aliens, the conversation was as follows (Tr. 638):

> I asked him I would need up to date W–4's because in reality the government says you're supposed to get a new W–4 every year.

> I asked him to have an application filled out and I said, more importantly, to give any change of status because of marriages, divorces, widows, children, additions, deletions, change of addresses and I said, specifically, having only the information I would get from Ruegsegger could affectuate any workmen's comp benefit that a person who would be injured could be affected by.
>
> And I said, also, as you probably know, Jim, you've been in the trucking industry for many years, you know the DOT not only checks the carrier but if they're using a personnel agency they have the responsibility to come check our records to make sure they meet the standards of the DOT for physicals up to date, I–9's up to date, applications up to date.
>
> He agreed, he says, okay, fine. When you agree to sign the contract and we get this all done I'll tell the employees to fill out these papers.

During the presentation of its defense, Respondent Branch called Bohlen as its witness. When Bohlen was asked if he and Garavaglia had a discussion relating to the employees' filling out applications, I–9s and W–2s prior to signing the contract, Bohlen replied: ''I think that was discussed in the meeting at Ruegsegger's.'' He was then asked: ''And what was your position, if and when those could be done?'' He replied: ''Well, we were going back and consult with counsel, which we did . . . . We were advised not to sign.'' Bohlen failed to indicate when, if ever, the Union informed Branch that legal counsel had advised against signing the documents Garavaglia wanted employees to complete.

During presentation of his case, counsel for the General Counsel sought to prove the alleged application violation by causing Ayers to testify that he first learned that Branch was requiring employees to complete new job applications when an employee gave him a copy of the December 26 memo on December 28. Ayers then claimed the Union had received no advance notice and that it was not afforded an opportunity to bargain.

I credit Garavaglia's claim that he discussed the need for obtaining applications, I–9s and W–4s with Bohlen and I credit his claim that Bohlen at least intimated that he would tell the employees to execute such documents for Garavaglia after Branch became signatory to the bargaining agreement.

In sum, I find the Union was given advance notice of Respondent Branch's intention to cause unit employees to complete new employment applications, I–9s and W–4s. I further find that the Union was afforded an opportunity to bargain with Branch over the matter. In the circumstances described, I find that the General Counsel has failed to prove that Respondents violated Section 8(a)(5) of the Act by unilaterally requiring employees to submit new applications without notice to or bargaining with the Union.

4. Substitution of medical plan

The name of Respondent Branch's medical plan is B.I.S., Inc. health care plan. It is a self-funded plan which is administered by Ameri-Plan, Inc. John Burghardt, the president of Ameri-Plan indicated during his testimony that, under the terms of the plan, Branch assumes all the risk to a threshold of $25,000 and a reinsurance agreement with an insurance company pays for amounts of individual claims which exceed $25,000. The plan was placed in the record as General Counsel's Exhibit 16(A), and the directory of preferred providers is in the record as General Counsel's Exhibit 16(B).

As indicated, supra, Branch and/or Garavaglia convinced Ruegsegger principals that they should enter the November 14 employee lease agreement with Branch because such action would permit them to save money on their health and workmen's compensation insurance.

When Ruegsegger and the Union executed the above-described collective-bargaining agreement on December 2, 1991, article 17 of that contract entitled ''Insurance and Pension'' provided, inter alia:

> *Section 1*. The Company agrees to provide and maintain a hospitalization and surgical plan for all company drivers, and their eligible dependents, at no cost to the employee, the plan being with Blue Cross/Blue Shield. Also the Company will provide one hundred fifty dollars ($150.00) per week sickness and accident, first (1st) day accident and eighth (8th) day illness, for thirteen (13) weeks at no cost to employees.
>
> The Company further agrees to make said Blue Cross/Blue Shield plan available to all brokers, it being understood should a broker choose to take advantage of the plan he agrees to pay for the plan at the cost that the Employer would normally pay for other employees, by owning equipment they must pay their own health insurance.

At or about the time the December 8 meeting with employees was held at Ruegsegger's garage, the Union was given a copy of the B.I.S., Inc. health plan. Union Business Agent Ayers testified the Union compared the plan to the existing Blue Cross/Blue Shield plan and noted the following deficiencies:

1. TMS (jaw disfunction) excluded.
2. One year waiting period for pre-existing conditions.
3. Aids and aids related illnesses excluded.
4. Not covered by Michigan State Insurance Regulations.
5. Limited access to plan as limited list of providers.
6. $10,000 mental and nervous lifetime limit while Blue Cross/Blue Shield is $30,000.
7. Blue Cross/Blue Shield universally accepted while Branch isn't.
8. Plan is self-funded and stability depends on cash flow of insurer.

Several days after the December 8 meeting, Bohlen told Garavaglia that Ayers had concluded there were some deficiencies in the B.I.S., Inc. plan. On December 16, Ayers sent Ruegsegger a letter, the body of which states (G.C. Exh. 17):

> Please be advised that an indepth study of the proposed ''B.I.S. Health Care Plan'' has been conducted. Our study revealed many areas where this plan is substandard to the Blue Cross/Blue Shield plan which is currently in effect.
>
> It is the position of Local 486 that the Company maintain the current health care plan which is defined

> in Article 17 of the collective bargaining agreement as Blue Cross/Blue Shield.
>
> Please also accept this notification as a formal request by Local 486 concerning the legal definition of the relationship between Ruegsegger Trucking Service, Inc. and Branch International Services, Inc. If Branch is a successor employer, as Mr. Garavaglia has stated, please so notify. If Branch International Services, Inc. is not a successor employer, please indicate, as requested above, what their relationship is.
>
> Thanking you in advance for your anticipated cooperation.

After Bohlen told Garavaglia the B.I.S. plan was deficient in some respects, Garavaglia informed Bohlen he would take appropriate action to assure that the B.I.S., Inc. plan met or exceeded the Blue Cross/Blue Shield plan then in effect at Ruegsegger in every respect. Garavaglia thereafter caused John Burghardt, the president of Ameri-Plan, the administrator of the B.I.S., Inc. plan to send Bohlen a letter which states, inter alia (G.C. Exh. 18):

> This is to certify that Branch International Service, Inc.'s insurance meets or exceeds the present Blue Cross plan at Ben Ruegsegger Trucking Services, Inc.
>
> This will also certify our company will authorize for payment any claims that would be covered under present Blue Cross Program in effect.
>
> If you have any questions, or need additional information, please call.

On December 19, Ayers sent Ruegsegger an information packet concerning self-funded insurance programs via letter which states (G.C. Exh. 19):

> In conjunction with our recent telephone conversation, please find enclosed an information packet concerning self-funded insurance programs.
>
> As you will see, there are several pages of questions to ask in order to properly compare the proposed B.I.S. plan to the Blue Cross/Blue Shield plan currently in effect.
>
> I hope this will help you in your efforts and hopefully you will conclude that switching to a self-funded program, even if it were contractually permissible, would appear to be very risky at best.
>
> In closing, I wish you and your family a happy holiday season and as always, feel free to contact me if you have any questions.

As noted, supra, Garavaglia, acting on behalf of Branch, signed the collective-bargaining agreement which had been entered by Ruegsegger and the Union on December 2, 1991, on December 31, 1991. Branch was designated to be the coemployer of the employees covered by the contract. Significantly, Garavaglia accepted the contract ''as is.''

Garavaglia testified that during the period extending from November 14 to December 31, 1991, he had expressed to Bohlen the fact that it was necessary that they work out the medical insurance before he could sign the subsisting collective-bargaining agreement. Bohlen indicated during his testimony that Garavaglia may have made such a comment to him at some time, but he claims that the Union never agreed that the B.I.S., Inc. plan could be substituted for the Blue Cross/Blue Shield plan. His claim was corroborated by Ayers.

On January 27, 1992, the Respondents substituted the B.I.S., Inc. plan for the Blue Cross/Blue Shield plan then in effect at the Ruegsegger operation. No evidence was offered to show that employees suffered adverse consequences as a result of the substitution to date.

Respondents defend their substitution of the B.I.S. plan for the Blue Cross/Blue Shield plan by contenting that Garavaglia indicated before he signed the collective-bargaining agreement on Branch's behalf, that Branch conditioned its acceptance of the contract on the ability of the parties to reach agreement on the medical insurance matter. Respondents argue that agreement on the switch of plans was reached when Branch rectified the Union's complaint that the coverages were not equal by guaranteeing that Branch's plan would cover everything that the Blue Cross/Blue Shield plan had covered.

The difficulty with Respondents' contention is that it failed to show that the Union agreed to the substitution of plans if Branch would assure it that the coverages under the B.I.S., Inc. plan would be equal to or better than those afforded under the Blue Cross/Blue Shield plan. To the contrary, as evidenced by Ayers' above-described correspondence with Ruegsegger, the Union steadfastly objected to substitution of Branch's self-funded plan for the commercial Blue Cross/Blue Shield plan. Additionally, I note that Respondents advance no claim that agreement was reached by the parties to amend or to strike article 17, section 1 from the subsisting collective-bargaining agreement. That provision clearly dictated that the Blue Cross/Blue Shield plan be maintained by the Respondents.[7]

In sum, it is clear that even though the subsisting collective-bargaining agreement expressly required Respondents to maintain a specified Blue Cross/Blue Shield health plan during the term of the agreement, Respondents, over the objection of the Union, substituted the self-funded B.I.S., Inc. plan for the Blue Cross/Blue Shield plan on January 27, 1992. By engaging in such action, I find that Respondents violated Section 8(a)(1) and (5) and Section 8(d) of the Act as alleged. *Connecticut Light & Power Co.*, 196 NLRB 967, 969 (1972); *Golconda Corp.*, 194 NLRB 609, 614 (1971).

5. The alleged checkoff-related violations

Article 1, section 3 of the subsisting collective-bargaining agreement is as follows:

> *Section 3. CHECK-OFF*: The employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union and agrees to remit to

[7] A copy of the 1991–1994 collective-bargaining agreement was placed in the record as G.C. Exh. 2. Inspection of the document reveals it contains two p. 22's. One p. 22 indicates James Bohlen accepted Branch International Services, Inc. as a signatory to the contract on 12/30/91. Bohlen testified he signed on that date. The second p. 22 places the date of Bohlen's acceptance signature as 12/3/92. Bohlen testified someone erroneously placed that date on the document. Respondent Branch contends the Union did not accept Branch as a coemployer signatory until 12/3/92. I find the contention to be without merit.

> said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required.
>
> The Local Union shall certify to the Employer in writing each month a list of its members working for the Employer who have furnished to the Employer the required authorization, together with an itemized statement of dues, initiation fees (full or installment), or uniform assessments owed and to be deducted for such month from the pay of such member, and the Employer shall deduct such amount from the first (1st) paycheck following receipt of statement of certification of the member and remit to the Local Union in (1) one lump sum. The Employer shall add to the list submitted by the Local Union the names of all regular new employees hired since the last list was submitted and delete the names of employees who are no longer employed.
>
> Where an employee who is on check-off is not on the payroll during the week in which deduction is to be made or has no earnings or insufficient earnings during that week or is on leave of absence, the employee must make arrangements with the Local Union to pay such dues in advance.
>
> The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Local Union or to such other organizations as the Union may request if mutually agreed to. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

In addition to containing the above-quoted checkoff clause, the present agreement contains a union-shop clause which requires membership in the Union within 31 days of the time an individual is hired. Ayers indicated that as new employees are hired by Ruegsegger, a business agent or the steward will uniformly require such employees to execute a dues-checkoff authorization. The original is given to the employer and a yellow copy is retained by the Union. The monthly billing statement referred to in paragraph 2 of the checkoff clause is mailed to the employer by the 3d or 4th of the month, with the expectation that appropriate dues and other moneys will be received by the Union by the 15th of each month. It is undisputed that Ruegsegger uniformly deducted and remitted dues and other moneys through November 1991. The parties stipulated that union dues deducted from the pay of employees by Respondents during the months of December 1991 and January through April 1992 were not remitted to the Union but were, instead, returned to the employees.

In December 1991 and January 1992, the Union submitted checkoff billing statements to Respondent Branch. Branch deducted the appropriate moneys from the pay of employees but refused to remit such moneys to the Union. It indicated in a letter to the Union dated January 13, 1992, inter alia, that it was refusing to remit because the statements contained Ben Ruegsegger's name although Branch was the employer; and that the moneys due the Union would be escrowed until the Union lived up to its agreement to cause employees to complete applications, 1–9s and W–4s (G.C. Exh. 23).

On February 4, 1992, the Union sent a checkoff billing statement to Branch which contained the names of both Ruegsegger and Branch. By letter dated February 11, 1992, Branch informed the Union it would not forward payments until it received original checkoff for dues (authorizations). Ayers credibly testified that he responded by contacting Garavaglia and advising him that Ruegsegger rather than the Union had the original checkoff authorizations and he should obtain them from Ruegsegger's office manager Lynn McNally. Alan Ruegsegger testified that when Ayers asked him about the checkoff authorizations, he told Ayers he could not find them. Although the Union had retained the yellow copies of most of the authorizations executed before Branch entered the picture, those documents, which were placed in evidence as General Counsel's Exhibit 42, were not sent to Branch.

By letter dated April 2, 1992, Branch informed the Union, inter alia, that if it did not receive the signed authorizations by April 8, 1992, it would return union dues deducted from employees' pay to them. Thereafter, on April 8, 1992, Respondents distributed a document to all bargaining unit employees, the body of which was as follows (G.C. Exh. 30):

> You will note on your pay check additional money returned to you for the Union Dues that have been deducted.
>
> Your Union refuses to turn in signed original Check-Off authorization as required in the Contract signed by the Company with them. Because of that language and the State of Michigan requiring written authorization for any deductions from your pay check, I have returned this amount to you.
>
> You may pay the money direct or you can sign below that you want the Company to deduct said amount and forward it to the Union. Do what you want, it is your choice.
>
> CHECK ONE, SIGN AND RETURN
>
> [ ] I do want you to deduct any Union Dues and forward said money to Teamsters Local 486.
>
> [ ] I do not want you to deduct any Union dues from my pay. If I decide to pay said dues, I will handle this myself.
>
> ____________________ ____________________
> Date Signature
>
> This notice must be returned to the Company within (7) days by mail or you can turn the notice into the Customer, Ben Ruegsegger, and he will forward the notice to the Company.
>
> If you do not return the notice, no monies will be deducted.

Four employees (Arnold, Wood, Orchard, and McGowan) signed forms indicating they did want Branch to deduct their union dues and send them to the Union. Several employees, including Whitney and Dubiel, signed forms indicating they did not want union dues deducted from their pay. Since May 7, 1992, Branch has deducted and remitted to the Union dues for only the four employees named above and other employees who have furnished it with a current dues-checkoff authorization.

By letter dated April 10, 1992, the Union advised both Respondents, inter alia, that Ruegsegger had signed checkoff authorizations executed when it alone was the employer, that the actions of Respondents were considered to be unlawful, and that the affected members had the right to strike even though the contract contained a no-strike clause.

After causing unit employees to indicate on the April 8, 1992 memo whether they wanted union dues deducted from their pay, Respondent Branch remitted the dues in the amount of $480 to the Union for four employees on or about May 7, 1992. From that date forward, Branch has deducted dues from the pay of only those employees who have provided it with a dues-checkoff authorization containing a date on or after April 8, 1992. When returning the Union's checkoff billing statements to it together with moneys checked off, it has stated after the names of most employee-members that it had ''No Authorization.'' (See, for example, G.C. Exh. 35.)

By letter dated April 15, 1992, Garavaglia sought justification for his refusal to abide by article 1, section 3 of the subsisting contract by seeking to cause the Michigan Department of Labor, Wage, and Hour Division to advise him he could not lawfully deduct union dues from the pay of employees. By contending in his letter that the contract provided ''that the Union must supply checkoff Authorization,'' but had refused to do so, Garavaglia received a letter from Harold Lewis, review investigator for the Detroit Office of the Michigan Department of Labor, which stated, inter alia (G.C. Exh. 34):

> Section 7 of Act 390, P.A. 1978 requires express written authorization for employers to make deductions from wages which are not specifically required by law or by a Collective Bargaining Agreement. If the language of the subject Collective Bargaining Agreement does not allow union dues deductions without a checkoff authorization from either the union or the effective employees, then such deductions would violate Act 390.
>
> Might I suggest contacting the National Labor Relations Board—(313) 226–3200 regarding the union's failure to provide the required authorization.

When Lewis appeared as a witness in the instant case, and was more fully appraised of the facts surrounding the Respondents' refusal to abide by article 1, section 3 of the current agreement, he was unable to voice any opinion which would assist me in resolving the issues presented.

The facts enumerated above reveal quite clearly that Respondents repudiated the collective-bargaining agreement during December 1991 and January 1992 because the Union had failed to assist Branch in its efforts to cause employees to complete applications, 1–9s and W–4s. Lack of checkoff authorizations was not assigned as a reason for the failure to abide by article 1, section 3 of the agreement until mid-February 1992.

With specific regard to dues-checkoff authorizations, Ayers' testimony, the yellow copies of authorizations executed by employees of Ruegsegger prior to December 1991, and Ruegsegger's regular remittance of dues checked off prior to December 1991 cause me to conclude that an inference is warranted that the Union provided Ruegsegger with white copies of checkoff authorizations executed by employee-members listed on the Union's December 1991 through April 1992 checkoff billing statements prior to December 1991. Although Alan Ruegsegger claimed during the hearing that he could not find the authorizations in February 1992, he did not deny that he had received them as they were executed.

Although Ruegsegger was legally and contractually obligated, before Branch signed the collective-bargaining agreement, to check off dues of its drivers and remit them to the Union, Respondents claim that legal and contractual obligation disappeared when Branch signed as coemployer, asked that the Union's checkoff billing statements he sent to it, and demanded that the Union obtain new checkoff authorizations naming Branch rather than Ruegsegger as the employer. Respondent Branch's liability under the Act cannot be considered separate and apart from that of Ruegsegger. As joint employers, each is responsible for the conduct of the other. *Ref-Chem Co.*, 169 NLRB 376, 380 (1968). Patently, Respondent Ruegsegger did not have the legal or contractual right during the period under discussion to require that the Union obtain new checkoff authorizations from employee-members. By becoming a coemployer with Ruegsegger, Branch's rights and obligations flowing from the collective-bargaining agreement were precisely the same as those of Ruegsegger. In short, Respondents had no lawful right to require that the Union obtain new dues-checkoff authorizations from employee-members.

It is well established that the remittance of union dues is a mandatory subject of bargaining under the Act. *Stevens & Associates Construction Co.*, 307 NLRB 1403 (1992); *International Distribution Centers*, 281 NLRB 742 (1986). It is equally well established that an employer which is a party to an existing collective-bargaining agreement refuses to bargain collectively within the meaning of Section 8(d) in violation of Section 8(a)(5) of the Act when it modifies the terms and conditions of employment established by that agreement without obtaining the consent of the Union. *Stevens & Associates Construction Co.*, supra.

Here, Respondents checked off dues from the pay of employees during the period December 1991 through April 1992 but failed to abide by the terms of article 1, section 3 of the contract by refusing to remit the appropriate moneys to the Union. It offered no legally cognizable reason for such action. By engaging in such conduct, I find Respondents violated Section 8(a)(5) and Section 8(d) of the Act as alleged. Moreover, by engaging in direct dealing with unit employees when it caused them to execute the April 8, 1992 memos described above, and by thereafter failing to honor dues-checkoff authorizations of employees which were executed prior to the time Respondent Branch signed the collective-bargaining agreement as coemployer on December 31, 1991, I find Respondents violated Section 8(a)(1) and (5) and Section 8(d) of the Act. *Rapid Fur Dressing*, 278 NLRB 905, 906 (1986); *General Split Corp.*, 284 NLRB 418 (1987); *Krolicki Wholesale Meats*, 270 NLRB 941 (1984).

6. The April 17, 1992 memo

Article 23, section 4(f) of the subsisting collective-bargaining agreement provides:

> (f) All available Loads to be dispatched at 3 p.m. daily, with available members either at home or in the yard, seniority being the determining factor.

At some time after the subsisting agreement was executed on December 2, 1991, Respondent Ruegsegger obtained a customer who shipped commodities from Bay City, Michigan, to Ginnesburg, Pennsylvania. Alan Ruegsegger credibly testified that several drivers complained that with the dispatch of the run at 3 p.m. they could not make the run on time, it was unsafe, and they would have to drive excess hours to make it.[8] Alan Ruegsegger explained the situation to Larry Picket, the union steward at the terminal, suggesting that the run be dispatched at 10 a.m. for the reasons indicated. Picket agreed there was a valid safety concern about the run and Ruegsegger thereafter prepared a notice of dispatch time change for the Pennsylvania run which was placed in the record as General Counsel's Exhibit 37. The memo which is dated April 17, 1992, states:

> *NOTICE TO EMPLOYEES*
>
> *DISPATCH PA*
>
> The Pa's will now be dispatched at 10:00 AM in the morning. [Y]ou have to be available to leave at Noon. This is due to safety reasons.
>
> *DOW CHEMICAL BAY CITY*
>
> Due to the accident out to Dow Chemical on April 16, 1992 we feel that Dow's will be enforcing their rules on the complex. (stop at stop signs, slow down obey the speed limit, etc.)
>
> *LOCAL 486*
>
> Due to the letters that the employees of Branch International received from Local 486, we feel that this is not a matter for Ruegsegger's or the employees of Branch International to get involved into. Due to a hearing scheduled (Case # 7–CA–32902 July 15, 1992) for all these matters, we feel Branch International & Local 486 can agree to things in court. Things have not really changed only that you receive a check from your New Employer Branch International. Local 486 is having the problem understanding this. *Also at this time we would like to let you know if certain actions are taken that the Employees will have to suffer the consequence.* [Emphasis added.]
>
> ALAN

Ruegsegger testified, without contradiction, that Picket approved language concerning dispatching the PA load at 10 a.m. after he lined out a portion of the verbiage. Picket and Ruegsegger agreed that Picket said a copy of the memo should be sent to Ayers. A copy was sent to Ayers and when Ruegsegger discussed the matter with him, Ayers asked if he had negotiated the change (in the contract) with Larry. When Ruegsegger indicated he had not negotiated, but he had discussed the safety reasons for moving it with Picket, Ayers told him he could not do it; that he would file charges.

When the Union's secretary-treasurer, Bohlen, appeared to testify, he indicated at one point (Tr. 387) that a steward could agree to a dispatch change in situations like the one under discussion, but he added he would normally check with the business agent first. Later, Bohlen testified a union steward could not negotiate a change in the language of the contract.

The complaint alleges, and General Counsel contends, that by changing the dispatch time on the above-described run from 3 p.m. to 10 a.m., and by issuing the April 17 memo which indicated that ''if certain actions are taken that the Employees will have to suffer the consequences,'' Respondents violated Section 8(a)(1) and (5) of the Act.

The record reveals that Union Steward Picket attended the negotiations which led to execution of the most recent agreement by Respondent Ruegsegger and the Union on December 2, 1991. Noting that Alan Ruegsegger discussed the need for the change in the dispatch time of the Pennsylvania load with Picket; that Picket suggested alteration in the language Ruegsegger originally intended to use to announce the change; and considering Bohlen's admission that a steward could agree to a dispatch time change in a situation such as the one under discussion, I find that General Counsel has failed to prove that Respondents acted unilaterally and without the agreement of the Union when changing the dispatch time of the Pennsylvania run.

With respect to the contention that Respondents threatened employees with unspecified reprisals by stating in the memo under discussion that ''if certain action are taken that the Employees will have to suffer the consequence,'' Alan Ruegsegger testified that he placed the remark in the memo to respond to that portion of the Union's April 10, 1992 letter which indicated that members affected by Respondent's refusal to deduct and remit dues ''had the right to strike even though the contract contained a no-strike clause.'' In my view, the remark under discussion, standing alone, is too general and ambiguous to constitute a threat of reprisal as alleged.

Conclusions of Law

1. Branch International Services, Inc. and Ben Ruegsegger Trucking Services, Inc. constitute a joint employer and jointly and individually they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material to this proceeding, International Brotherhood of Teamsters, Local 486, AFL–CIO has been the exclusive collective-bargaining representative of employees in the following unit:

> All company drivers and owner/operators (drivers) employed by Respondents at or out of Respondent's Ruegsegger's 1754 Chip Road, Kawawlin, Michigan facility, but excluding mechanics, guards, and supervisors as defined in the Act.

4. By unilaterally substituting the B.I.S. Inc. health plan for the contractually required Blue Cross/Blue Shield plan; by failing and refusing to furnish the Union with relevant information which was necessary to permit it to perform its representative functions; refusing to honor the checkoff provisions of the current bargaining agreement (art. 1, sec. 3) from December 1, 1991 forward; and by dealing directly with employees by causing them to elect whether union dues

[8] The run was about 500 miles. Under DOT regulations, a driver must rest for 8 hours after driving 10 hours. DOT allows 500 miles in 10 hours.

would be deducted from their pay and be remitted to the Union, although they had previously executed checkoff authorizations, Respondents engaged in conduct which is violative of Section 8(a)(1) and (5) and Section 8(d) of the Act.

5. Respondents did not otherwise violate the Act as alleged.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents unlawfully substituted the B.I.S., Inc. health plan for the contractually required Blue Cross/Blue Shield plan, I will recommend they restore the status quo ante by immediately providing unit employees with the Blue Cross/Blue Shield plan required by the agreement, reimbursing employees for all damages suffered, if any, as a result of the unlawful substitution, with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that Respondents have unlawfully failed to honor and abide by article 1, section 3 of the agreement since December 1, 1991, and that they unlawfully caused unit employees to elect whether union dues were to be deducted from their pay and remitted to the Union on April 8, 1992, despite the fact that such employees were then signatory to valid dues-checkoff authorizations, I shall recommend that Respondents be required to reimburse the Union for any monetary losses it sustained as a result of Respondent's unlawful conduct. *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondents, joint employers Branch International Services, Inc., Auburn Hills, Michigan, and Ben Ruegsegger Trucking Service, Inc., Kawkawlin, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union and dealing directly with employees by unilaterally permitting employees to decide whether union dues, initiation fees, and uniform assessments will be deducted from their pay and be remitted to the Union without regard to whether such employees are signatory to valid checkoff authorizations.

(b) Substituting the B.I.S., Inc. health plan for the contractually required Blue Cross/Blue Shield plan.

(c) Refusing to honor and abide by the checkoff provisions contained in article 1, section 3 of the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide bargaining unit employees with the Blue Cross/Blue Shield health coverage required by the current collective-bargaining agreement.

(b) Reimburse the Union for monetary damages it sustained as a result of the refusal to honor and abide by article 1, section 3 of the contract since December 1, 1991, and as a result of Respondents' April 8, 1992 action which caused employees to elect whether union dues, initiation fees, and uniform assessments would be deducted from their pay and be remitted to the Union without regard to whether such employees were signatory to valid checkoff authorizations.

(c) Reimburse unit employees for any losses they sustained, if any, as a result of the substitution of the B.I.S., Inc. health plan for the contractually required Blue Cross/Blue Shield health plan, with interest.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its 1754 Chip Road, Kawawlin, Michigan facility copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''